

Message Text

CONFIDENTIAL

PAGE 01 EC BRU 01330 091937Z

73

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AMEMBASSY OTTAWA

AMEMBASSY TOKYO

C O N F I D E N T I A L EC BRUSSELS 01330

E.O. 11652: GDS

TAGS: EFIN, ETRD, EEC

SUBJECT: EXPORT CREDIT UNDERSTANDINGS

REF: (A) EC BRUSSELS 1329, (B) STATE 28559, (C) EC BRUSSELS 1222,
(D) TOKYO 1713, (C) STATE 12371

1. BEGIN SUMMARY: REPORTS IN BRUSSELS INDICATE CONTINUED SMALL STATE DISSATISFACTION OVER BEING LEFT OUT OF THE BILATERAL DISCUSSIONS ON RESTRAINTS ON EXPORT CREDITS. THE COMMISSIONCONTINUES TO HOPE THAT ANY UNDERSTANDING CAN BE PUT INTO A COMMUNITY CONTEXT BEFORE BEING IMPLEMENTED. OTHERWISE, IT WILL ATTEMPT THROUGH THE EUROPEAN COURT TO

UNDO MEMBER STATE PARTICIPATION. LOCAL FRENCH REPRESENTATIVES LEAD US TO BELIEVE THAT FRANCE WISHES TO AVOID HAVING AN AGREEMENT THROUGH THE COMMUNITY. WILLY NILLY, THE US WILL BE INVOLVED IN AN EC CONSTI-TUTIONAL ISSUE. THE MISSION RECOMMENDS THAT WASHINGTON BEGIN TO TAKE ACTION TO AVOID HAVING THIS EC CONSTITUTIONAL ISSUE JEOPARDIZE POSSIBLE EXPORT CREDIT UNDERSTANDINGS. END SUMMARY.

2. AS WE REPORTED IN REF C THE DUTCH HAVE INSISTED THAT THE
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 EC BRU 01330 091937Z

FEBRUARY 16 FINANCE COUNCIL HOLD A GENERAL DISCUSSION ON

EXPORT CREDITS. WE HAVE SUBSEQUENTLY LEARNED THAT ONE REASON FOR THE DUTCH REQUEST WAS THE CONTINUED REPORTS OF INFORMAL NEGOTIATIONS TO LIMIT EXPORT CREDITS (REF C). FOR THESE SAME REASONS, THE COMMISSION SUPPORTED THE DUTCH REQUEST DURING THE DISCUSSION BY THE COMMITTEE OF PERMANENT REPRESENTATIVES (COREPER). CONSEQUENTLY, BOTH PERMDEL AND COMMISSION OFFICIALS EXPECT THAT THE FINANCE MINISTERS' DISCUSSION WILL FOCUS ON THE QUESTION OF COMMUNITY COMPETENCE IN THE FIELD OF EXPORT CREDITS. SOME EXPECT THAT THE SMALL MEMBER STATES MAY REQUEST TO BE INCLUDED IN THE CURRENT INFORMAL NEGOTIATIONS.

3. LOCAL REPRESENTATIVES OF THE SMALL MEMBER STATES HAVE EXPRESSED CONSIDERABLE IRRITATION ABOUT BEING EXCLUDED FROM THE CURRENT TALKS, PARTICULARLY SINCE FOR 18 MONTHS ALL NINE MEMBER STATES AND THE COMMISSION PARTICIPATED FULLY IN THE GENTLEMEN'S AGREEMENT NEGOTIATIONS. THE SMALL STATES FELT THEY HAD ASSURANCES FROM RAMBOUILLET THAT DECISIONS WOULD NOT BE TAKEN WITHOUT THEIR CONSULTATION. THE SMALL MEMBER STATES ARE PARTICULARLY INTERESTED IN THE SUBSTANCE OF AN EXPORT CREDIT AGREEMENT IN ORDER TO INSURE THAT IT BE TIGHT AND BINDING. THEY SUPPORT THE COMMISSION'S EFFORT TO ASSERT COMMUNITY COMPETENCE.

4. IT IS MORE DIFFICULT HERE TO KNOW PRECISELY WHAT IS THE POSITION OF THE LARGER MEMBER STATES. FRENCH LOCAL REPRESENTATIVES GIVE THE IMPRESSION THAT FRANCE HAS MADE IMPORTANT SUBSTANTIVE CONCESSIONS IN BREAKING THE SIX-MONTH IMPASSE IN EXPORT CREDIT DISCUSSIONS IN ORDER TO GAIN THE CONSTITUTIONAL POINT THAT AN EXPORT ARRANGEMENT BE HANDLED AS A BILATERAL, NOT A COMMUNITY MATTER. MANY PEOPLE SEE THE FRENCH CONCESSIONS AS A DIRECT RESULT OF THE EUROPEAN COURT OPINION WHICH GRANTED THE COMMUNITY COMPETENCE IN EXPORT CREDITS. FRANCE WANTS VERY MUCH TO MAINTAIN ITS FREEDOM OF ACTION OUTSIDE THE EC FRAMEWORK AND FELT THAT THE ONLY WAY TO DO SO WAS TO MOVE FAST IN THE BILATERAL DISCUSSIONS. THE FRENCH SEEM TO BE HOPING THAT THE STRATEGY OF SIMULTANEOUS UNILATERAL DECLARATIONS WILL MAKE IT DIFFICULT FOR THE EUROPEAN COURT TO RULE AGAINST "AN AGREEMENT."

5. UK PERMDEL SOURCES ARE NOT SURE OF THE BRITISH GOVERNMENT
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 EC BRU 01330 091937Z

POSITION, BUT ARE RECOMMENDING TO LONDON THAT AGREEMENT BE REACHED ON THE SUBSTANCE OF AN UNDERSTANDING, OF WHICH THE MAIN ELEMENT WOULD BE THE RESOLUTION OF FRENCH/US DISAGREEMENTS. AT THAT POINT THE BRITISH WOULD LIKE TO SEE IF BILATERAL AGREEMENT ON SUBSTANCE CAN BE RECONCILED WITH COMMUNITY COMPETENCE. THEY SEEM TO FEEL THAT THE BEST POSSIBILITY WOULD BE A JOINT EC/MEMBER STATE DECLARATION ON EXPORT CREDIT POLICY. THIS FORM OF PARTICIPATION WOULD INDICATE OVERLAPPING COMMUNITY/MEMBER STATE

RESPONSIBILITIES. THE LOCAL UK REPRESENTATIVES DOUBT THAT THE UNITED KINGDOM WOULD PARTICIPATE IN AN EXPORT CREDIT ARRANGEMENT WHICH WAS BEING ACTIVELY OPPOSED BY THE COMMISSION ON CONSTITUTIONAL GROUNDS. UK AND COMMISSION SOURCES SEEM TO BELIEVE THAT THE GERMANS ARE IN THE SAME CAMP.

6. A SOURCE IN THE CABINET OF EUROPEAN COMMISSION VICE PRESIDENT SOAMES, WHO IS RESPONSIBLE FOR THIS SUBJECT, SAYS THAT THE COMMISSION IS DELIGHTED TO HAVE LEARNED FROM PRESS AND OTHER REPORTS THAT THE UNITED STATES AND THE FRENCH HAVE MADE PROGRESS ON THE SUBSTANCE OF AN EXPORT CREDIT ARRANGEMENT. HOWEVER, IN VIEW OF THE EUROPEAN COURT DECISION, OUR SOURCE DOUBTS THAT THE COMMISSION COULD AVOID TAKING THE MATTER TO THE COURT IF SEVERAL MEMBER STATES PARTICIPATED IN PARALLEL UNILATERAL DECLARATIONS BECUASE THIS WOULD BE A CLEAR INFRINGEMENT ON THE COMMUNITY'S COMPETENCE. SOAMES IS CLEAR ON THIS POINT AS ARE, ACCORDING TO OUR SOURCE, SEVERAL OTHER COMMISSIONERS. THE COMMISSION IS RELAXED ABOUT THE SUBSTANCE OF AN AGREEMENT, BUT IT IS CONCERNED TO PROTECT THE EC COMPETENCE. THEIR HOPE IS THAT AFTER EXPLORATORY BILATERAL CONVERSATIONS THE ISSUE CAN BE BROUGHT TO THE COMMUNITY IN ORDER THAT THE COMMUNITY AS SUCH CAN PARTICIPATE. (REFTEL A REPORTS THAT UNDER THE COMMISSION'S PROPOSED MANDATE AN AGREEMENT WOULD TAKE THE FORM OF UNILATERAL DECLARATIONS- WITH THE COMMUNITY MAKING THE DECLARATION ON BEHALF OF THE NINE.) SOAMES KNOWS THAT A US TEAM IS TRAVELING IN EUROPE AND ASKED HIS STAFF TO RELAY TO US HIS HOPE THAT IT COULD COME TO BRUSSELS FOR A DISCUSSION WITH THE COMMISSION.

7. COMMENT: THOUGH THE MISSION DOES NOT KNOW THE DETAILS OF THE CONVERSATIONS THAT HAVE GONE ON SO FAR BETWEEN THE UNITED STATES AND SOME MEMER STATES, WE BELIEVE THAT IT IS IMPOSSIBLE FOR THE UNITED STATES TO AVOID BEING INVOLVED IN THE EC CONSTITUTIONAL ISSUE. WE DO NOT KNOW HOW FIRM THE CONFIDENTIAL

CONFIDENTIAL

PAGE 04 EC BRU 01330 091937Z

FRENCH HAVE BEEN IN REQUESTING THAT THE US NOT DISCUSS THESE CONVERSATIONS WITH THE COMMISSION OR WITH SMALLER, NON-RAMBOUILLET MEMBER STATES. NOR IS IT ABSOLUTELY CLEAR FROM HERE WHETHER THE GERMANS, BRITISH OR ITALIANS WOULD REFUSE TO PARTICIPATE IN PARALLEL UNILATERAL DECLARATIONS IF THESE MEET THE STRONG OPPOSITION OF THE COMMISSION AND THE SMALLER MEMBER STATES. HOWEVER, IT IS CLEAR TO US THAT THE COMMISSION WILL GO TO THE EUROPEAN COURT TO SEEK TO HAVE PARALLEL UNILATERAL DECLARATIONS DECLARED NULL AND VOID. THE LEGAL TECHNICALITY OF PRONOUNCING SUCH A "NON-AGREEMENT" ILLEGAL IS OF SOME IMPORTANCE. NEVERTHELESS, WE SHOULD TAKE INTO ACCOUNT WHAT IT WOULD MEAN TO BE PARTICIPATING IN PARALLEL UNILATERAL DECLARATIONS WHICH THE EUROPEAN COURT HAS DECLARED OF NO LEGAL EFFECT FOR FRANCE, GERMANY, ITALY AND THE UK. COMMIS- SION LEGAL OFFICIALS SAY THE COURTS'S OPINION ENCOMPASSES

UNILATERAL DECLARATIONS AND CONSEQUENTLY ARE CONFIDENT OF A COURT DECISION IN FAVOR OF THEIR POSITION. THUS, THE PRINCIPAL PROBLEM IS HOW TO PRESERVE FRENCH CONCESSIONS ON SUBSTANCE WHILE AVOIDING COMMISSIN/SMALL MEMBER STATE EFFORTS TO SET ASIDE ANY ARRANGEMENT BECAUSE OF THEIR CONSTITUTIONAL CONCERNS. US MANEUVERABILITY IN THIS FIELD MAY BE NARROW AND IT IS CERTAINLY NOT THE US RESPONSIBILITY TO CLEAR UP INTERNAL EC CONSITUTIONAL PROBLEMS. HOWEVER, IT IS VERY MUCH IN OUR PRACTICAL INTEREST (A) TO GET AN AGREEMENT, AND (B) TO KEEP IT FROM BEING ATTACKED IN THE EUROPEAN COURT. END COMMENT.

8. RECOMMENDATION: THE MISSION RECOMMENDS THAT THE UNITED STATES TAKE ADVANTAGE OF ANY LEEWAY ALLOWED BY THE FRENCH IN INFORMING THE COMMISSION AND THE SMALLER MEMBER STATES OF DETAILS OF THE ONGOING NEGOTIATIONS. IF THIS ALLOWS FOR THE VISIT OF A SPECIAL TEAM SUCH AS THAT IN REF B, SO MUCH THE BETTER. DISCUSSIONS WITH THE COMMISSION WOULD AVOID GIVING THE APPEARANCE THAT THE UNITED STATES IS TRYING TO FRAGMENT THE COMMUNITY. DISCUSSIONS WITH THE SMALLER MEMBER MEMBER STATES WOULD HELP GAIN THEIR SUPPORT FOR WHAT HAS ALREADY BEEN DONE AND MINIMIZE THEIR EFFORTS TO PUSH THE COMMISSION TO EXTREMES. WE RECOMMEND THAT THE US ATTEMPT TO LEARN IN LONDON AND BONN HOW THE BRITISH AND GERMAN GOVERNMENTS INTEND TO PROCEED IN REGARD TO THE ISSUE OF EC COMPETENCE. IN EVALUATING HOW TO PROCEED WE SHOULD ASCERTAIN WHETHER THEY WOULD PROCEED WITH PARALLEL UNILATERAL

CONFIDENTIAL

PAGE 05 EC BRU 01330 091937Z

DECLARATIONS DESPITE COMMISSION OPPOSITION. THE DECISION WILL INVOLVE BOTH TREASURIES AND FOREIGN MINISTRIES. MORRIS

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